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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,747	10/23/2003	Dennis Chien	CFP-015406 (15745/414)	2454

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EXAMINER

LEWIS, AARON J

ART UNIT PAPER NUMBER

3743

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

Office Action Summary

Application No.

10/693,747

Applicant(s)

CHIEN, DENNIS

Examiner

AARON J. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,5,8,9 are rejected under 35 U.S.C. 102(b) as being anticipated by Nebel ('509).

As to claim 1, Nebel discloses a nose filter device having a holder (15) adapted to a nostril of a nose and having at least two holes (i.e. each holder has a hole therethrough) defined through the holder; and multiple filters (i.e. one filter in each of the two holders) mounted on the holder and facing the holes in the holder.

As to claim 5, Nebel discloses the holder is a cover with an opening (see figs.5-10).

As to claim 8, Nebel discloses the holder to comprise two tubes (fig.10) and the filters mounted respectively inside the tubes near the outer end.

As to claim 9, Nebel discloses a connector (17) mounted between the outer ends of the tubes.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nebel ('509) in view of Rimkus ('491).

The difference between Nebel and claim 2 is a side surface adapted to adhere to a user.

Rimkus, in a nose filter having a side surface (16), teaches an adhesive (18) on the side surface for the purpose of securing the nose filter in place within a user's nostrils by adhering to a user's nostril (col.4, lines 26-50).

It would have been obvious to modify the side surface of Nebel to include an adhesive thereon because it would have provided a means for securing the nose filter in place within a user's nostril as taught by Rimkus.

5. Claims 3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nebel ('509) in view of Midgley et al. ('505).

The difference between Nebel and claim 3 is the holder comprising two plates, the filter being mounted between the two plates.

Midgley et al., in a nose filter, teaches a holder (fig.3) comprising two plates (D) between which is mounted a filter (page 1, lines 59-68) for the purpose of providing a medicament to a user for inhalation as well as for filtering.

It would have been obvious to further modify the filter of Nebel to include two plates on either side of a filter because it would have provided a means for providing a medicament to a user for inhalation as well as for filtering as taught by Midgley et al..

As to claim 4, the two plates of Midgley et al. are net plates of gauze.

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6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nebel ('509).

As to claims 6 and 7, the cover of Nebel is made of soft plastic or other suitable material (col.1, lines 56-57). It would have been obvious to modify the material of Nebel to be of any desirable material which would have suited the needs of one of ordinary skill including paper or cloth as an obvious matter of design choice with no new or unobvious results accruing. Applicant has not disclosed any particular criticality for the material of the cover; therefore, it is submitted that the soft plastic or other suitable material as disclosed by Nebel would have performed at least as well as paper or cloth.

7. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nebel ('509) in view of Mercurio ('917).

The difference between Nebel and claim 10 is a recess defined in each tube in the inner surface near the outer end, and the filters being mounted respectively inside the recesses of the tubes.

Mercurio, in a nose filter device, teaches a recess (fig.5, note recess between retainers (32) into which filters (18,30) are held) defined in each tube in the inner surface near the outer end, and the filters being mounted respectively inside the recesses of the tubes.

It would have been obvious to modify the tubes of Nebel to include recesses defined in each tube in the inner surface for the purpose of holding a plurality of filters as taught by Mercurio.

Claim 11 is substantially equivalent in scope to claim 10 and is included in Nebel as modified by Mercurio for the reasons set forth above with respect to claim 10.

As to claims 12,13,15, Mercurio teaches at three filters mounted inside the recesses of each tube (fig.5), the recesses forming multiple chambers with each filter being received inside a respective one of the chambers, the chambers each communicating with each other.

As to claim 14, Mercurio teaches multiple protrusions (32) formed on the inner surface of each tube.

Claim Objections

8. Claim 2 is objected to because of the following informalities: in line 2 "...paste..." appears to be a typographical error; based upon the disclose it appears that the word – plate—was intended by applicant. Appropriate correction is required.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant nose filter devices.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
March 21, 2005